REMARKS

Reconsideration of the application, as amended, is respectfully requested.

Claim 12 has been amended as supported in the paragraph at the top of page 6. Claim 14 has been canceled without prejudice.

With respect to the Section 102 rejection, claim 12 has been amended to recite that the pH of the mixture remains above 5.5. It is not agreed that claim 12 previously was anticipated, since it recited stopping the fermentation while the pH remains above 5.5. Nevertheless, the present amendment further distinguishes Stohl et al. by reciting that the pH of the mixture of the food product remains above 5.5. Therefore, it is respectfully requested that the rejection be withdrawn.

As to the Section 103 rejection, Schol et al. are concerned with yoghurts, which are intended to have a low pH. The pH's mentioned in Schol et al.'s examples illustrate this point:

Example 1: pH of 4.0 (column 4 lines 34 and 35);
Example 2: pH of 4.3 (column 4 lines 62 and 63);
Example 3: pH of 3.95 (column 5 line 14);
Example 4: pH of 4.45 (column 5 line 14);
Example 5: pH of 4.4.

Thus the experimental data disclosed in Schol et al. relate to yoghurt-based desserts where the pH is less than 4.5, a whole pH unit away from the upper limit of 5.5 and no more than a mere 0.2 pH units above the lower end of the disclosed range. Therefore, there is no motivation in Schol et al. for a person skilled in the art to obtain a product with a pH of above 5.5.

It will be apparent that there would have been no motivation for a person skilled in the art to apply the teachings of Schol et al. in relation to "tart" yoghurt frozen dairy desserts (column 2 line 19), to the manufacture of other milk-based food products with a pH of above 5.5. The problems that exist with other milk-based food products such as ice cream in relation to the effects of low pH (below 5.5) on product quality are simply not relevant to yoghurt-based compositions and are not addressed by Schol et al.

With respect to the 103(a) rejection of Aebischer et al. (US 6,004,800) in combination with Tamime, as discussed at page 3 lines 8 to 12 of the present application, production of dextrans by anaerobic fermentation of polysaccharide-producing strains of lactic acid bacteria is accompanied by the production of acid, resulting in a lowering of the pH. For example in Schol et al., the pH is reduced to below 4.45. The undersigned has been informed that in the absence of any means of regulation, the pH will therefore decrease during a fermentation of from 10 to 20 hours to well below 5.5.

Aebischer et al. describes maintaining the pH at between 6 and 7.3. Regardless of how this is achieved, this appears clearly to be a description of pH regulation. In the examples, where a specific pH is mentioned, the pH seems to be maintained tightly at a specific value (of pH 6.7 see column 9, lines 65 and 66 and column 10 lines 36 and 37).

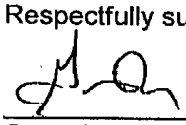
By contrast, the process of the present invention does not involve pH regulation during the fermentation process – a feature that is clearly set out in the claims currently on file. This feature is defined in the specification at page 6 lines 19 to 22 as meaning that the pH is not artificially maintained.

As to Tamime, the unfermented milk is apparently added during fermentation, thus regulating pH. In contrast, unfermented milk added in instant claim 11 is added to the already fermented mixture. See also page 13 lines 15 to 32 and page 8 lines 20 to 27.

It is submitted, therefore, that the teaching in Tamime does not remedy the deficiency in the primary reference, Aebischer et al. and that all claims are inventive over Aebischer et al. in combination with Tamime.

In view of the foregoing, it is respectfully requested that the application, as amended, be allowed.

Respectfully submitted,



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